UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC., G.L. BREWER, GERALD E. EIDAM, JR., JAMES E. MICHAEL, and **ROBERT PENMAN**,

Plaintiffs,

v. **CASE NO. 3:02-cv-1005-J-25MCR**

LANDSTAR INWAY, INC., LANDSTAR LIGON, INC., and **LANDSTAR RANGER, INC.,**

Defendants,

QUALCOMM, INC.,

Intervenor.
_____/

ORDER

THIS CAUSE came before the Court on a bench trial on January 16-18, 2007. Defendants presented an Oral Motion for Judgment as a Matter of Law (Dkt. 378) pursuant to Rule 52 at the close of Plaintiffs' case-in-chief, and Plaintiffs' opposed. The Court granted Defendants' motion as it relates to damages and denied the motion as it relates to injunctive relief. (*See* Dkt. 382.) Defendants renewed the motion on the issue of injunctive relief at the close of Defendants' case. (Dkt. 383.) Defendants' renewed motion was taken under advisement. (*See* Dkt. 385.) Upon due consideration, the Court finds that Defendants' renewed motion for judgment as a matter of law on the issue of injunctive relief (*See* Dkt. 383) is due to be granted. The Court makes the following findings of fact and conclusions of law on the issues of damages and injunctive relief pursuant to Federal Rule of Civil Procedure 52:

I. STANDARD OF REVIEW

Federal Rule of Civil Procedure 52(c) provides in pertinent part as follows:

> If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law. . . .

Fed. R. Civ. P. 52(c); *United States v. $242,484.00*, 389 F.3d 1149, 1172 (11th Cir. 2004). "In addressing a Rule 52(c) motion, the court does not view the evidence in the light most favorable to the nonmoving party, as it would in passing on a Rule 56 motion for summary judgment or a Rule 50(a) motion for judgment as a matter of law; instead, it exercises its role as factfinder." *Id.* (citations omitted).

II. FACTUAL AND PROCEDURAL BACKGROUND

A. PARTIES: Plaintiffs Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), G.L. Brewer, Gerald E. Eidam, Jr., James E. Michael, and Robert Penman (collectively referred to as "Plaintiffs") brought this action against Defendants Landstar Inway, Inc., Landstar Ligon, Inc., and Landstar Ranger, Inc. (collectively referred to as "Landstar" or "Defendants"). Plaintiff OOIDA is a business organization of persons and entities who own and operate motor vehicles, commonly known as owner-operators. Plaintiffs Brewer, Eidam, Michael, and Penman (collectively referred to as "Contracting Plaintiffs") are owner-operators. Owner-operators are small business truckers who own and operate a truck tractor. They lease their tractor and driving services,

and often their trailors, to motor carriers, agreeing to move items in interstate commerce for the motor carrier in exchange for specified compensation. The Defendants are authorized motor carriers within the meaning of 49 C.F.R. § 376.2(a), and they provide transportation of property in interstate commerce under authority issued by the U.S. Department of Transportation ("DOT").

B. NATURE OF ACTION: As authorized motor carriers, Defendants must enter into written leases with the owners of equipment and must adhere to and perform the required lease provisions. Plaintiffs alleged that Defendants violated certain Truth-in-Leasing provisions, namely 49 C.F.R. § 376.12(d) & (h),[1] and Plaintiffs sought various remedies for these alleged violations pursuant to 49 U.S.C. § 14704(a)(1)-(2) and (e).[2] Plaintiff OOIDA brought this action in a representative

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[1] Section 376.12(d) provides as follows:

> Compensation to be specified. The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum which is attached to the lease. Such lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount.

49 C.F.R. § 376.12(d). Section 376.12(h) provides as follows:

> Charge-back items. The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.

49 C.F.R. § 376.12(h)

[2] Section 14704(a)(1) provides that a "person may bring a civil action for injunctive relief;" Section 14704(a)(2) provides that a carrier or broker "is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation [of the regulations];" and Section 14704(e) provides for attorney's fees. 49 U.S.C. § 14704(a)(1)-(2) & (e).

capacity and sought declaratory and injunctive relief on behalf of all owner-operators. (Amended Compl. (Dkt. 151) at 3.) Defendant Ligon brought a counter-claim against Plaintiff Eidam for breach of contract and sought damages, attorney's fees, and costs. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1337, and 1367.

C. CLASS CERTIFICATION: On September 20, 2004, Plaintiffs filed a motion to certify a class, which Defendants opposed. The Court heard oral arguments on the issue. On August 30, 2005, this Court certified a class comprised of "[a]ll owner-operators in the United States who, after November 1, 1998, and through the pendency of this proceeding, had or have leases with [Defendants] or their authorized agents or business affiliates {"Lessors"), that are subject to federal regulations contained in Part 376, Code of Federal Regulations." (Order (Dkt. 199) at 8.) The Court stated, however, that "not all aspects of this case present common issues. For example, if these common questions are resolved in favor of the putative class, the issue of damages will be unique and subject to individualized proof." (*Id.* at 4.)

D. SUMMARY JUDGMENT: Both parties filed motions for partial summary judgment. In an Order dated October 6, 2006, this Court found that (1) Defendants had not violated Section 376.12(d); (2) charge-backs which include fees and profits are not unlawful under Section 376.12(h); and (3) Defendants had violated Section 376.12(h) by failing to disclose documents necessary to determine the validity of charges. (Order (Dkt. 320) at 8, 12 & 14-15.)

E. PRETRIAL ORDER: Several disputes arose among the parties prior to trial regarding the available remedies and the appropriate scope of the trial. In the interests of justice, the parties, and witnesses, the Court issued an Order which, *inter alia*, sought to provide clarification on the

appropriate scope of the trial. (Order (Dkt. 369).) The Court stated that "[t]o the extent Plaintiffs seek to present evidence that Defendants have violated the Federal Leasing Regulations, that phase of this case 'has come to a conclusion.'" (*Id.* at 4 (quoting Jt. Waiver (Dkt. 324) at 1); *see* Order (Dkt. 320) (making liability determinations).) The Court also explained that a breach of contract claim was not properly before the Court. (Order (Dkt. 369) at 4.) Additionally, the Court found that it has no authority to award restitution and disgorgement in this case. (*Id.* at 5-9.) The Court stated that the "only claims remaining in this action are those regarding injunctive relief, damages sustained, and attorney's fees."[3] (*Id.* at 9 (footnote added).)

F. CLASS DECERTIFICATION: Defendants raised the issue of class decertification on the issue of damages in their trial brief, and the Court directed the parties to present oral arguments on the issue. After oral arguments were heard on this issue, the Court determined that decertification was necessary on the issue of damages to protect the interests of absent class members and to avoid a potentially unfair, unmanageable, and inefficient resolution of the individual damages claims. The Plaintiffs were permitted to proceed to trial on the issues of injunctive relief and their individual damages claim, with Order to enter on class decertification. The Court will enter an Order decertifying the class contemporaneously with this Order.

III. DISCUSSION

A. DAMAGES

The Court granted Defendants' motion for judgment as a matter of law on the issue of

[3] Defendants had a compulsory counterclaim for damages against Plaintiff Eidam. However, Defendant Ligon moved to dismiss its counterclaim against Plaintiff Eidam after the Court granted judgment for Defendant on Plaintiff's damages claim. (*See* Dkt. 384.)

damages after the close of Plaintiffs' case. The Court's findings of fact and conclusions of law on the issue of damages are set forth herein.

i. Findings of Fact

To the extent any of the following findings of fact constitute conclusions of law or the application of law to fact, they are incorporated as conclusions as law.

1. Plaintiff Eidam was formerly leased to Defendant Ligon as an owner-operator beginning on or about November 19, 1997.

2. Plaintiff Brewer was formerly leased to Defendant Inway as an owner-operator beginning on or about January 30, 1998.

3. Plaintiff Michael was formerly leased to Defendant Ligon as an owner-operator beginning on or about November 19, 1997.

4. Plaintiff Penman was formerly leased to Defendant Ranger as an owner-operator on or about August 1, 1997.

5. In Defendants' Interrogatory No. 7, Defendants presented the following statement:

> In the Amended Complaint . . . you allege that Contracting Plaintiffs' Leases failed to properly disclose Chargebacks . . . , failed to specify how each Chargeback was calculated, failed to provide documentation for the Chargebacks, and that the Chargebacks exceeded the amount Defendants paid for the respective product, service or equipment. For each and every separate Class Member state and describe . . . (d) *all products and services* (including the vendor, the price, and the vendor's internal and third-party costs) *comparable to the items actually purchased* by the individual Class Member that were available to each Class Member during the term of the lease; (e) *what each Class Member would have done differently if the Lease had disclosed* . . . all required information about charge-backs for the items actually purchased by the individual Class Member.

(Emphases added).[4]

6. Plaintiffs' Response to this interrogatory was as follows: "[s]ubject to, and without waiving all objections set forth above, the Contracting Plaintiffs state that they *have no evidence responsive* to Interrogatory Nos 7(d)-(e)." (Emphasis added).

7. At trial, however, Plaintiff sought to admit evidence that they explicitly denied having. *See* Trial Tr. vol. 2, 30:15-31:2, Jan. 17, 2007. Upon proper objection, the Court excluded such evidence, concluding that Defendants would be unfairly prejudiced by the admission of the withheld evidence. Trial Tr. vol. 2, 41:22-23.

8. Plaintiffs presented insufficient evidence at trial tending to show that Plaintiffs sustained damages as a result of Defendants' failure to disclose documents to determine the validity of chargebacks.

9. To the contrary, Plaintiffs testified that it would even be beneficial to use Landstar's program, and that Plaintiffs have continued to purchase products and services through Landstar even after the suit was filed. *See, e.g.*, Trial Tr. vol. 2, 140:6-23. The testimony diminishes Plaintiffs' claim of damages.

10. In fact, Plaintiff Brewer admitted that, after this lawsuit was filed, he signed an updated lease; and Plaintiffs Brewer and Michael testified that they were fully aware of the pending claims regarding mark-ups, and yet, continued to utilize Landstar's programs. Trial Tr. vol. 2, 124:10-20; 140:2-23.

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[4] Subsection (d) tends to support an objective analysis of whether any comparable products and services were available during the term of the lease; subsection (e) tends to support a subjective analysis of whether there was any detrimental reliance as to Plaintiffs.

11. Plaintiffs repeatedly attempted to convince the trier of fact that the basis of damages sustained should be the difference between what Landstar charged back to Plaintiffs and what Landstar paid to a third-party vendor—the differential amount. *See* Trial Tr. vol. 1, 10:23-13:20, Jan. 16, 2007 (discussing damages completely in terms of the mark-up amounts).

12. However, the Plaintiffs were instructed that simply proving that Defendants charged more for a product or service than they paid a third-party vendor is insufficient, standing alone, to establish that Plaintiffs have sustained damages as a result of a disclosure violation under Section 376.12(h). *See* Trial Tr. vol. 1, 52:10-17; *see generally* 49 C.F.R. § 376.12(h): 49 U.S.C. § 14704(a)(2).

13. At trial, Plaintiffs again attempted to argue about the validity of charge-backs. *See* Trial Tr. vol. 2, 134:18-19 & 135:3-4, Jan. 17, 2007 (stating that "[w]e have contended that these charge-backs are invalid" and further stating that "charge-backs are not presumptively valid").

14. The Court has held (and reiterated) that charge-backs that include profits and fees are not unlawful under Section 376.12(h). However, to the extent Plaintiffs presented evidence on this issue, the Court finds that the charge-backs were valid under the theories of liability before the Court.

15. The Court finds that Plaintiffs offered no credible, persuasive, or admissible evidence from which the Court could find that they sustained damages as a result of the Defendants' violation of Section 376.12(h).

ii. Conclusions of Law

To the extent any of the following conclusions of law constitute findings of fact, they are incorporated as findings of fact.

1. The Court has found that Defendants violated the Truth-in-Leasing Regulations by failing to disclose documents to determine the validity of charges pursuant to Section 376.12(h). 49 C.F.R. § 376.12(h) ("Charge-back items. The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge.").

2. Defendants are liable to Plaintiffs for "damages sustained . . . as a result" of that violation. 49 U.S.C. § 14704(a)(2) ("Damages for violations. A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.").

3. At trial, Plaintiffs bore the burden of proving damages under Section 14704(a)(2). *See Stewart & Stevenson Servs. Inc. v. Pickard*, 749 F.2d 635 (11th Cir. 1984); *Robertson v. North Am. Van Lines, Inc.*, No. C-03-2397 SC, 2004 WL 5026265, at *4 (N.D. Cal. Apr. 19, 2004) ("A carrier's violation of federal regulations does not, in and of itself, entitle a plaintiff to a recovery, as the plaintiff must still prove damages.").

4. Plaintiffs have cycled through various theories upon which recovery may be based for Defendants' violation of Section 376.12(h). (*See, e.g.*, Amended Compl. (Dkt. 151) (seeking, *inter*

alia, restitution, disgorgement, and damages); Jt. Pretrial Statement (Dkt. 305) (same); Jt. Waiver (Dkt. 324) ("elect[ing]" to seek equitable relief instead of damages); Pls.' Trial Br. (Dkt. 342) ("Plaintiffs will show that Landstar's *written leases do not authorize the chargeback of sums exceeding* Landstar's payments to third party vendors . . ."); *see generally* Order (Dkt. 369) (discussing the various theories).)

5. Plaintiffs may not rely on any claim for damages under a breach of contract theory as a basis for "damages sustained" under Section 376.12(h). To find otherwise would effectively (and erroneously) allow Plaintiffs to transfer the Court's liability determinations under the regulations to other theories of liability which are not before the Court.

6. In the interests of justice, the parties, and witnesses, this Court entered an Order to clarify the scope of this trial. (Order (Dkt. 369).) In the Order, the Court stated that the "only claims remaining in this action are those regarding injunctive relief, damages sustained, and attorney's fees." (*Id.* at 9.)

7. In order to establish damages in this case, Plaintiffs were required to present evidence that they sustained damages "as a result" of Defendants' failure to disclose pursuant to Section 376.12(h)—not pursuant to any "Actual Payment Clause" under a breach of contract theory or other liability theory.

8. The Court has unambiguously held that charge-backs which include fees and profits are not unlawful under Section 376.12(h).

9. The Court finds that proof of the difference between Defendants' third-party costs and the prices they charged Plaintiffs does not, standing alone, establish that Plaintiffs sustained damages

as a result of the violation.

10. No federal case has set forth a standard to apply under the Truth-in-Leasing regulations, but the Defendants ask this Court to apply a detrimental reliance standard as required under the Truth-in-Lending regulations. (*See* Defs.' Trial Br. (Dkt. 343) at 8); *cf. Turner v. Beneficial Corp.*, 242 F.3d 1023 (11th Cir. 2001) (discussing damages under the Truth-in-Lending regulations).

11. Plaintiffs, on the other hand, seek to distinguish *Turner* and argue that subjective reliance is not required under the Truth-in-Leasing regulations. (Pls.' Resp. to Defs.' Trial Br. (Dkt. 353) at 3.)

12. However, the Court need not determine whether a subjective standard applies in this case, as Plaintiffs have presented no evidence—objective or subjective—of damages sustained as a result of Defendants' failure to disclose documents pursuant to Section 376.12(h).

13. Hence, any determination as to whether a detrimental reliance standard is required under the Truth-in-Leasing regulations would not change the outcome of this case. *See Rorex v. Traynor*, 771 F.2d 383, 387 (8th Cir. 1985) ("It is clear that if the taxpayers had suffered some out-of-pocket costs as a result of the disclosure in this case, such losses would be included in their 'actual damages' . . . Traynor argues that the statutory language permits recovery *only* for such out-of-pocket losses . . . *It may well be that Traynor's interpretation is correct, but we need not decide that issue in this appeal because the taxpayers did not present any evidence* . . .") (second emphasis added).

14. Accordingly, the Court finds that Plaintiffs have failed as a matter of law to establish damages sustained as a result of Defendants' violation of Section 376.12(h).

15. Judgment shall be entered in favor of Defendants on the issue of damages.

B. INJUNCTIVE RELIEF

Defendants made a Rule 52 motion for judgment as a matter of law as it relates to Plaintiffs' request for injunctive relief at the close of Plaintiffs' case-in-chief and renewed the motion at the close of Defendants' case. Upon consideration, the Court finds that Defendants' motion is due to be granted.

i. Findings of Fact

To the extent any of the following findings of fact constitute conclusions of law or the application of law to fact, they are incorporated as conclusions as law.

1. There are two leases that are at the center of this dispute: Original Lease and New Lease.

2. This Court has held that Defendants violated Section 376.12(h) by failing to provide access to documents necessary to determine the validity of charges under both the Old and New Leases. (Order (Dkt. 320).)

3. The Plaintiffs state that "the Court did not identify any qualitative differences between any of the various chargebacks at issue in this case" and that the Court "did not carve out any differences between Landstar's failure to document the chargebacks under either the Original or New Leases." (Pls.' Post-Trial Br. (Dkt. 392) at 3-4; *see, e.g.*, Defs.' Resp. to Pls.' Opp. to Qualcomm's Mot. (Dkt. 362) at 3-4 (stating that "given the level of generality at which the parties presented summary judgment issues to the Court," Defendants were proposing to disclose the confidential pricing information out of an abundance of caution).) Where the parties are uncertain regarding the scope of the Court's Order, the Court may properly provide further guidance.

4. In response to Landstar's proposed disclosure, Qualcomm, Inc. sought to intervene in this

action contending that Defendants were not required to disclose Qualcomm's cost to Landstar in order to comply with the Court's summary judgment Order.

5. By Order dated January 5, 2007, the Court held that Landstar's charge-back under the New Lease for Qualcomm's services is "not a charge-back item as anticipated by Section 376.12(h) *for which* lessors must be afforded copies of Qualcomm's confidential pricing information to determine the validity of the charge." (Order (Dkt. 364) at 4 (emphasis added).)

6. The Court has further provided that as to the New Lease, Defendants' violation of Section 376.12(h) only applies to the LCAPP Tire Purchase Program. *See* Trial Tr. vol. 3, 12:3-13:3. [5]

7. Contrary to Plaintiffs' argument at trial, *see* Trial Tr. vol. 3, 17:12-15, the Court has not vacated its prior Order. In no way does this alter the Court's rulings that Defendants must literally comply with the leasing regulations and that Defendants failed to disclose documents necessary to determine the validity of charges. The Court now turns to the evidence presented at trial to determine whether Defendants must be permanently enjoined from further violating Section 376.12(h).

8. Section 376.12(h) provides that "[t]he **lease shall clearly specify all items** that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, **together with a recitation as to how the amount of each item**

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[5] Mr. O'Malley, Executive Vice-President of Operations, testified that he spends a lot of time with the owner-operators and talks with them a lot. Yet, he testified that no one has ever asked him what was the differential or the cost to Landstar. *See* Trial Tr. vol. 3, 40:6-12. This is not particularly surprising. Even after the New Lease stated that charge-backs may include profits and fees, the evidence shows that Plaintiffs continued to utilize Landstar's services and programs. *See* Trial Tr. vol. 2, 124:10-20; 140:2-23; *see also id.*, 180:8-12 ("Landstar doesn't believe that the specific disclosure of these programs is going to have an adverse impact on it. It may have an adverse impact on owner-operators . . .).

is to be computed. The lessor shall be afforded copies of those documents which are necessary to determine the validity of the charge."). 49 C.F.R. § 376.12(h) (emphases added).

9. Defendants replaced the Old Lease in June 2004.

10. The New Lease does "clearly specify" all charge-backs and provide "a recitation as to how the amount of each item is to be computed." When an exact amount of a charge-back is not known until after the liability is incurred, as in the case of charge-backs under the LCAPP Tire Purchase Program of the New Lease, Landstar states that owner-operators will be charged a "variable" cost.

11. As to the LCAPP Tire Purchase Program, Landstar computes the amount to be charged as "variable, plus $6 per tire." Pls.' Ex. 4(c). Defendants must provide owner-operators with an invoice or other documentation to allow owner-operators to determine the validity of those charges.

12. When a lessor elects to purchase a tire through LCAPP, Landstar provides owner-operators with settlement statements reflecting the total charge. *See, e.g.*, Pls.' Ex. 81 (Named Pls. Settlement Statements).

13. If a lessor requests additional documentation, Landstar will provide an invoice reflecting the third-party cost, the delivery receipt, and the authorization for the charge-back. *See* Trial Tr. vol. 3, 29:2-32:2, Jan. 18, 2007.

14. For all of the other programs at issue in this case, Appendix C to the New Lease provides that Landstar's pricing to owner-operators is based on fixed rates and discloses that certain chargeback items include a charge for profits and fees. For those programs, the only documents necessary to determine the validity of those charges are documents showing that owner-operators

were in fact charged the amounts that are stated in the lease. The evidence at trial demonstrates that Landstar provides settlement statements to owner-operators reflecting the amount that was charged back to owner-operators. Pls.' Ex. 81.

15. Therefore, the evidence fails to show that there are any ongoing violations of Section 376.12(h).

16. Any contention that Defendants will deny access to documents necessary to determine the validity of charges in the future is speculative and unsupported by the evidence.

17. Defendants' efforts to comply with the regulations have been demonstrated by their issuance of the New Lease in June 2004 and their considerable efforts to compile an elaborate disclosure plan subsequent to the Court's summary judgment Order, which, if disclosed, could have potentially exposed Defendants to extensive liability to non-parties to this suit.

18. Based on the evidence, the Court finds that there is no threat of a future violation of Section 376.12(h). Also, the Court finds that there is no evidence that irreparable harm will result if the Court does not enter an injunction.

ii. Conclusions of Law

To the extent any of the following conclusions of law constitute findings of fact, they are incorporated as findings of fact.

1. As to the issue of injunctive relief, Defendants concede that "OOIDA had standing to pursue injunctive relief, even after the Named Plaintiffs ended their relationship with Landstar," but they argue that decertification changed things. (Defs.' Post-Trial Memo. (Dkt. 393) at 4.)

2. Alternatively, Defendants argue that Plaintiffs cannot satisfy the requirements for an injunction.

3. Plaintiffs argue that "[w]hile the Court found class-wide trial of damages might have been unmanageable, there is no similar reason to find injunctive relief unmanageable" and request that the Court determine the issue of injunctive relief on a class-wide basis. (Pls.' Post-Trial Br. (Dkt. 392) at 17.)

4. At the hearing held on January 16, 2007, the Court stated that "the proof of damages . . . becomes unmanageable." Trial Tr. vol. 1, 52:22-23. The Court's decertification ruling does not pertain to the issue of injunctive relief.

5. The issue of injunctive relief presents the same inquiry as to each class member, namely, whether the Court should enter an injunction to prevent Defendants from violating Section 376.12(h).

6. This Court may properly rule on the injunctive relief claim on a class-wide basis, "instead of clogging the federal courts with innumerable individual suits litigating the same issues repeatedly." *Klay v. Humana, Inc.*, 382 F.3d 1241, 1273 (11th Cir. 2004) (stating that "there are a number of management tools available to a district court to address any individualized damages issues that might arise in a class action, including: (1) bifurcating liability and damage trials with the same or different juries; (2) appointing a magistrate judge or special master to preside over individual damages proceedings; (3) decertifying the class after the liability trial and providing notice to class members concerning how they may proceed to prove damages; (4) creating subclasses; or (5) altering or amending the class"): *Robinson v. Metro-North Commuter R.R.*, 267 F.3d 147, 162

n.7 (2d Cir. 2001) (noting several other alternatives available to courts in class actions) (citation omitted); *accord* Fed. R. Civ. P. 23(b)(2) (allowing class action to be maintained where injunctive relief may be appropriate as to the class as a whole).

7. The Court agrees with Plaintiffs that the issue of injunctive relief is manageable on a class-wide basis.

8. "To obtain a permanent injunction, a party must show: (1) that he has prevailed in establishing the violation of the right asserted in the complaint: (2) there is no adequate remedy at law for the violation of this right: and (3) irreparable harm will result if the court does not order injunctive relief." *Alabama v. U.S. Army Corps of Eng'rs*, 424 F.3d 1117, 1128 (11th Cir. 2005). Plaintiffs concede that this is the applicable standard to apply, but cite additional authority which seems to suggest that Plaintiffs need not show irreparable harm. (*Compare* Pls.' Post-Trial Br. (Dkt. 392) at 2 (citing and quoting the exact standard as the Court quotes from *U.S. Army Corps of Engineers*), *with id.* at 13 (citing authority to seemingly suggest that "irreparable injury [does] not need to be shown in order to enforce a statutory injunction").

9. In *Illinois Bell Telephone Co. v. Illinois Commerce Commission*, the Seventh Circuit Court of Appeals stated that "where the plaintiff seeks an injunction to prevent the violation of a federal statue that specifically provides for injunctive relief, it need not show irreparable harm." 740 F.2d 566, 571 (7th Cir. 1984). However, in *Illinois Bell*, the applicable statute provided that the court "*shall* enforce . . . by a writ of injunction or other proper process." *See* 47 U.S.C. § 401(b) (emphasis added); *Illinois Bell*, 740 F.2d at 571 (distinguishing the traditional principles of equity and stating that "[u]nder [47 U.S.C. § 401(b)], the court only need find that 'the order was regularly

made and duly served, . . . the defendant is in disobedience of the same,' and the plaintiff is 'injured.'"). The applicable statute in this case provides no such command to the court as the statute did in *Illinois Bell*, but rather provides that a "person *may* bring a civil action for injunctive relief." 49 U.S.C. § 14704(a)(1) (emphasis added).

10. Therefore, this Court need not enter an injunction against Defendants merely because the Court has found that Defendants have violated the regulations. Rather, this Court must exercise its equitable principles before imposing a permanent injunction in this case. *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) ("The grant of jurisdiction to ensure compliance with a statute hardly suggests an absolute duty to do so under any and all circumstances, and a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law.") (citations omitted); *Amoco Prod. Co. v. Vill. of Gambell, Alaska*, 480 U.S. 531, 542 (1987) ("injunction is an equitable remedy that does not issue as of course").

11. The Defendants argue that the remedy of actual damages and attorney's fees is an adequate and appropriate remedy at law. (Defs.' Post-Trial Memo. at 9.)

12. Plaintiffs argue that Defendants' argument would dictate the conclusion that a motor carrier could never be enjoined from ongoing violations under Section 14704(a)(1), because Section 14704(a)(2) allows a suit for damages. (Pls.' Post-Trial Br. at 12-13.)

13. The Court finds Plaintiffs' argument persuasive and finds that Congress did not intend for the statutory remedies to be mutually exclusive or that a claim for damages under Section 14704(a)(2) precludes the entry of an injunction under Section 14704(a)(1).

14. In this case, Plaintiffs have prevailed in establishing that Defendants violated Section

376.12(h) by failing to disclose documents necessary to determine the validity of charges.

15. Defendants have, nonetheless, demonstrated that they have discontinued the violation of the regulation.

16. The "discontinuance of wrongful conduct does not alone warrant denial of injunctive relief, for the appropriateness of granting an injunction against now-discontinued acts depends upon the bona fides of the expressed intent to comply, the effectiveness of the discontinuance, and, in some cases, the character of past violations." *Petersen v. Talisman Sugar Corp.*, 478 F.2d 73, 78 (5th Cir. 1973)[6] (citing *United States v. W. T. Grant Co.*, 345 U.S. 629 (1953)).

17. For reasons discussed above, this Court finds that Defendants have expressed a sincere intent to comply with the regulations. Defendants have also demonstrated that the effectiveness of the discontinuance presents no threat of future violations. Upon due consideration of these and other pertinent factors, the Court finds that an injunction should not enter in this case.

18. Judgment shall be entered in favor of Defendants on the issue of injunctive relief.

19. The Preliminary Injunction entered by this Court pursuant to Order dated January 5, 2007, is due to be dissolved.

IV. CONCLUSION

Accordingly, it is **ORDERED:**

1. Defendants' Motion for Judgment as a Matter of Law (Dkt. 383) is **GRANTED.**

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[6] In *Bonner v. City of Prichard*, the Eleventh Circuit adopted as precedent the decisions of the Fifth Circuit rendered prior to October 1, 1981. 661 F.2d 1206, 1207 (11th Cir. 1981).

Judgment shall be entered in favor of Defendants on the issues of damages and injunctive relief.

2. The Preliminary Injunction entered by this Court pursuant to Order (Dkt. 364) dated January 5, 2007. is hereby **DISSOLVED.**[7]

3. The Clerk is directed to close this file.

4. The Court retains jurisdiction over this matter for a determination of any attorneys' fees related to this action pursuant to 49 U.S.C. § 14704(e).

DONE AND ORDERED in Chambers this 29 day of March, 2007.

HENRY LEE ADAMS, JR.
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

[7] The parties have filed miscellaneous documents regarding the dissolution of the preliminary injunction, but none of those documents have been properly designated as motions. Notwithstanding, the issue is now moot.